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# Inviolability of Life, Property, and Honor of Non-Muslim in Jurisprudence

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**Abstract:** *One of the controversial issues in international law and human rights is the rights of minorities. Since all non-Muslims enjoy essential dignity and honor only based on being a human, they must also benefit from human rights. Islam has allowed the religious minorities to enjoy human dignity and the manifestations of this dignity are crystallized in the form of minority rights. These rights consist of inviolability of the property of the People of Book, freedom of work and economic activities, inviolability of life and blood money of the non-Muslim, etc. the Islamic view of humanity is filled with mercy and compassion and it cannot be otherwise, because the Islamic religion is the last of the religions that were prescribed by Allah, may He be exalted, and He commanded all of mankind to enter this religion. He revealed this religion and sent it down to the most compassionate of mankind, Muhammad. Based on that, kind treatment of neighbors is enjoined and is recommended, whether they are Muslim or not. And this is the right thing to do. If any of the non-Muslims comes to our country for work or business, it is not permissible to detract his rights. Also it is not part of Islam to force the non-Muslim to enter this religion, because sincerity is one of the conditions of accepting Islam. Islam regards whatever property or money considered by non-Muslims as valuables \_according to their faiths \_ and pledges to protect them, even if they pose no real value to Muslims.*

**Keywords:** *Non-Muslim, Islam, Infidels, Rights.*

## INTRODUCTION

### Topic One: Meaning of Non-Muslim

#### Part One: Knowledge of Infidels and Their Types

Non-Muslims are of different classifications in view of Islamic jurisprudence and the type of their relationship with Islamic government. In one of these classifications the infidels are divided into the infidels who believe in a Revealed Book or the People of Book (or the followers of the non-Islamic revealed religions) and the infidels who believe in no revealed book.

#### A. People of Book:

The people of Book represent the infidels who believe in other revealed religions including Judaism, Christianity and Zoroastrianism. Since the conclusion of a contract with infidels is only possible with the People of Book the great jurists whenever speak of the infidels living in Islamic territory in fact are referring to the People of Book who has accepted to pay alms to the Islamic government. The important point that needs to be noted here is the inclusion of Zoroastrians among the People of Book. This inclusion is documented by the traditions from the Shia Imams (peace be upon them) in which the Zoroastrians have been

declared the People of Book, e.g. a tradition from Imam Sadeq (peace be upon him) quotes Imam to have said: they (Zoroastrians) had a prophet who was killed and they had a revealed book which was burnt.

#### **B. Other Infidels:**

This group hosts infidels other than the three aforementioned groups of People of Book (Jews, Zoroastrians, Christians) who either have no revealed religion or their religions are not confirmed by Islam as the People of Book.

We should also refer to two other groups to whom the jurists have alluded in their jurisprudential works and discussed their being part of the people of Book or not, i.e. Samaritans and Mandaeans. It is said that Mandaeans are a Christian sect and Samaritans are a Jewish sect.

The word "infidelity" has been used in Quran for 515 times in different forms. All these applications can be classified in the following 8 senses:

- I. Denial of articles of faith;
- II. Denial of monotheism and the oneness of God;
- III. Denial of the mission of the Messenger of Allah;
- IV. Denial of idols;
- V. Ingratitude;
- VI. Negligence of religious obligations;
- VII. Committing sin;
- VIII. Expression of hatred;

In one of the Shia traditions Imam Sadeq is quoted to have classified the meanings of infidelity under five categories:

1. Denial of divine lordship: the belief of those who argue that there is neither any God nor any paradise or a hell;
2. Conscious denial;
3. Ingratitude;
4. Negligence of divine obligations;

#### **Topic Two: Inviolability of Life and Blood Money of Non-Muslim Citizens**

##### **Blood Money of the Non-Muslim Citizens according to Jurists**

In Sharaya it is stated that:

The blood money of the non-Muslim citizens, regardless of their being Christian or Jewish, is eight hundred Dirhams and the blood money of their women is the half of the aforementioned amount.

In Some prophetic traditions it has been mentioned that the blood money of a Jew and Christian is the same amount determined for the Muslim and in some other traditions the blood money for Jews and Christians has been decided to be equal to four thousand Dirhams. Sheikh Tusi has attributed these two groups of traditions to those cases where the murderer is used to kill the non-Muslim citizens. Thus, the judge is allowed to make the blood money heavier in order to reduce the audacity in the murder (Allameh Helli, 1969).

Whenever the Jews or Christians or Zoroastrians keep their words and not to drink wine or fornicate or eat pork or marry their sisters in the public or refuse to eat in Ramadhan or not to enter the mosques or not to enter the Muslim Bazaars at night and shop in the day light, if someone kills them he must pay four thousand Dirhams as their blood money. Some jurists have proposed this tradition to be the basis of the action in the Islamic community without taking the modes and conditions into account.

Whenever Imam gives immunity to a Jew or a Christian or a Zoroastrian and protects them under the shadow of a contract and determines alms for them and they pay the alms and keep their words of not breaking any of the conditions if someone kills one them he should pay the blood money of a Muslim...Whenever the Jews or

Christians or Zoroastrians do not keep their words and not observe the mentioned conditions if one of them is killed eight hundred Dirhams must be paid as the blood money and no Muslim will be executed in retaliation. This is not only against the ideas of jurists it is an interpretation that is not based on the texts. This is the case with the interpretation that has been offered of the following tradition quoted by Junaid: the non-Muslim citizens who follow Islamic decrees and pay their alms their blood money (for a man) is four thousand Dirhams. But those who have been defeated by Muslims like Zoroastrians their blood money is eight hundred Dirhams.

### **Exigency of the Initial Maxim and Principle**

Before turning to this issue we are better to see what is the exigency of the initial maxim and principle of the blood money of the non-Muslim citizen? If the blood money of the non-Muslim citizen is exempted or due to the absolute nature of the principle of blood money it is also applied to the blood money of the non-Muslim citizens?

The fact is that there is no general maxim regarding the blood money of the non-Muslim citizen because the prophetic traditions regarding the blood money are not providing any general maxim of it rather they just define how much the blood money could be in the murder or mutilation as well as the types of blood money and the difference between the blood money the men and women. However, the verse in Holy Quran that addresses the issue of blood money is exclusively about the murder of the Believer:

No believer has the right to kill any believer otherwise due to a mistake and if anyone mistakenly kills a believer he must free a slave and pay his blood money to the relatives unless the latter forgive him. And if the victim is a believer who belongs to a hostile tribe the murderer must free a slave. And if he is from a tribe that is your friend the blood money must be paid to his relatives and a monotheist slave have to be freed.

Some of the Sunni scholars use the interpretations offered of this verse in order to prove the equality of the blood money of the Muslim and non-Muslim citizen within Islamic territory. This idea is against the context of the verse. The pronouns used in this verse add to the ambiguity and cause the reader to be doubtful of the victim's origin. Sheikh Tusi in his *Mabsut* states:

This verse is speaking of the blood money of the believer who has been murdered within the territory of infidels who have concluded an agreement with Muslims. Some Sunni scholars contend that the verse is addressing the blood money of the non-Muslim citizen within Islamic territory. Nevertheless, what we have said is much more compatible with the context of the verse because all the pronouns in this verse refer to the believer and we cannot attribute it to a non-believer (Sheikh Tusi, 2009).

The latter idea is further supported by the fact that this verse continues to speak of the atonement of freeing a slave while the murder of the infidel does not have any atonement. Moreover, if we suppose that this atonement refers to the blood money of the non-Muslim citizen or both the blood money of the non-Muslim citizen and the believer within the territory of the people who has signed an agreement with the Muslims the verse still speaks of paying the blood money to the relatives and no allusion is made to the equality of the blood money of the believer and the non-Muslim citizen.

Thus it becomes clear that regardless of the traditions regarding the blood money of the non-Muslim citizen we cannot prove the equality of the blood money in this context. Then, this maxim suggests that the non-Muslim citizen does not deserve to receive the whole blood money. Thus, majority of jurists suggest that the infidels who have been given immunity by the Muslims do not receive the blood money.

### **Topic Three: Economic and Commercial Rights of Non-Muslims**

#### **First Part: Inviolability of the Property of the People of Book**

From the point of view of Islamic religion, the property of non-Muslim citizen who pays his alms and taxes to the government is inviolable like the properties of Muslim citizens and no one has the right to violate them and if someone tries to violate the Islamic government is obliged to take back their rights.

#### **Second Part: Freedom of Work and Economic Activities**

Economic and commercial activities are a natural right of all human beings and are not an exclusive right of Muslims. The non-Muslim minorities who are the citizens of the Islamic states have the right to have free economic activities and no one has the right to prevent them.

They are not allowed to engage in financial and commercial transactions which are not of value in Islam.

However, those trades that can harm the culture, faith and economy of Muslims is forbidden (Al-Hurr al-Ameli et al., 1983).

### **1. Freedom of Trade**

Islamic jurists have not considered being a Muslim as one of the conditions of the trade and have not mentioned it as one of the requirements of seller and buyer. Being a Muslim is neither the condition of conclusion of a sale nor a condition of its veracity. Then, the trade with religious minorities is allowed (Najafi, 1988).

According to Islam, religious minorities and even the refugees who do not pay any alms to Islamic government and are living there temporarily have the right to engage in free trade like the Muslims. The religious minorities are not only free to trade with the men who share their creeds rather they can also trade with Muslims (Allameh Helli, Tazkirah al-Fuqaha, 1, 463).

### **2. Freedom of Mortgage**

Mortgage is an agreement that allows one to borrow something in return of another thing. In other words, it is a bond for a debt (Shahid Thani, 1990).

Belief in Islam is neither a condition of the mortgagor nor a condition of the mortgagee. Mortgage is among the transactions in which one's belief is not a condition for conclusion and veracity of it. Then, the minorities are allowed to do it and they are free to engage in mortgage agreement with their fellow citizens and the Muslims. The Prophet of Islam (peace be upon him) had allowed Muslims to lend and borrow mortgage to/from the non-Muslim citizens.

Non-Muslim citizens are allowed to use every commodity as mortgage trade with their fellow non-Muslim citizens according to their creed (even the wine and swine) but in their trade with the Muslims they are banned to use the goods which are not of financial value in Islam because the Muslim cannot own the aforementioned commodities due to their lack of value. A faithful Muslim can neither use these goods as mortgage nor could he accept them as mortgage. Although the non-Muslim citizens cannot give a Muslim wine or swine as a mortgage, he can ask one of his non-Muslim fellow citizens who is trusted by the Muslim to keep it as the mortgage for the latter (Najafi, 1988).

### **3. Freedom of Partnership with Others**

Partnership is an agreement the result of which is the permission of shared ownership of a particular object by numerous owners. Partnership in this sense is one of the contracts and follows the rules of the veracity of contracts.

All religious minorities are allowed to invest with one of his fellow non-Muslim citizens in a joint economic and commercial project. In the same way that the Muslims are free to jointly invest in trade and other commercial activities the religious minorities are also allowed to handle that job but as to their partnership with Muslims there are various ideas among which we refer to the ideas of the Shia scholars hereunder:

The non-Muslim citizen is allowed to have partnership with his fellow non-Muslim citizens but it is abominable to do so with Muslims (Shahid Thani, 1990).

### **4. Right of Conclusion of PLS (Profit-Loss-Sharing) and Lease Contracts**

PLS is a religious contract based on which the owner of a property gives his property to someone to trade and they share the profits and losses (Allameh Helli, n; Shahid Thani, 1990).

Religious minorities can give their properties to their fellow Muslims for PLS. There is no restriction in this field in Islam. Likewise, the Muslims can share their properties with these non-Muslim citizens in PLS form.

Shia jurists have not considered Islam as one of the conditions of the parties to the PLS contract but they believe that PLS is a form of representation in the sense that the one who receives the property for trade is

representing the owner. Then, the same conditions that exist between the attorney and client are expected to be between these two parties (Allameh Helli, n).

Lease is a contract based on owning a determinate profit in return of a determinate exchange and is obligational for both parties (the lessor and the lessee). (Shahid Thani, 1990)

Islamic jurisprudence does not differentiate between Muslims and the religious minorities in contracts and trade and only those cases which insult the Islamic Decrees are forbidden (Al-Kasani, Abu Bakr, 1905).

Lease is one of those contracts in which the Muslim and non-Muslim citizen share the same right and all conditions are equal for them; even leasing some objects is restricted for the Muslims which there is no such restriction for the non-Muslim citizens.

In Islamic jurisprudence some specific decrees have been stipulated for the non-Muslim citizens which here we mention some of them:

#### **A) Freedom of Leasing a House from Muslims**

Leasing a house from Muslims by the religious minorities is allowed. Islam's tolerance in dealing with the believers of other religions is to the extent that if a house is leased from the Muslims the secret sale of wine in that place is allowed and the Muslim cannot terminate the contract rather he is not allowed to prevent the owners from selling the wine (of course this is the case when the ban of wine sale has not been mentioned in the lease contract), because wine sale is permitted in their religion and they have the right to act according to their religion (Allameh Helli, n).

#### **B) Freedom of Hiring Muslims for Farming and Construction and etc.**

Islamic jurists are unanimous that religious minorities can hire the Muslims for irrigation, farming, tailoring and the like and pay them. It was in this way that Imam Ali (peace be upon him) was hired by a Jew to irrigate his garden and his wage was a date for each bucket of water. The Prophet heard about it but did not make any reaction. The same thing was done by one of Prophet's disciples who hired a Jew and the Prophet heard it and did not make any specific reaction (Sheikh Tusi, 2009; Allameh Helli, n; Ibn Qudamah, Al-Mughni, n).

The reason for veracity of such a contract is the fact that there is no insult or humiliation in such contract against the Muslims. In this contract the Muslim receives a determinate wage in return of his work.

Of course, if a non-Muslim citizen hires a Muslim for his personal affairs and pays him for this or if the Muslim himself signs up as a volunteer for this the Shia scholars have the following view as to such a lease contract:

In the same way that a Muslim can get paid for such activities as irrigation and tailoring for the non-Muslim citizen, the service provided for the latter is also correct (Allameh Helli, n). Some jurists believe in impermissibility in this regard and set ban on hiring a Muslim by a non-Muslim citizen. For example, Shahid Thani in his work entitled *Al-Rawzah Al-Bahyah* sets ban on the hiring of a Muslim by a non-Muslim.

#### **5. Sharecropping, Right of Preemption and Representation of Religious Minorities**

A non-Muslim citizen who lives under the protection of an Islamic government and has accepted the conditions stipulated by the Islamic state can engage in a sharecropping with the Muslim and Islamic jurisprudence has accepted the sharecropping of the Muslim with non-Muslim. In this regard, Sheikh Saduq quotes a tradition from Imam Sadeq (peace be upon him):

"One Imam Sadeq was asked that if a Muslim can sharecrop with non-Muslim while the seeds and cow (for plowing) are provided by the Muslim and the land, water and tax and work are handled by the non-Muslim; Imam answered: there is no problem." (Al-Hurr al-Ameli et al., 1983; Al-Saduq et al., 1993)

Of course, one needs to know that the permission of sharecropping of a Muslim with the non-Muslim is only accepted in the issue of farming and work but according to the laws of our country and also most of the countries in the world those people who are not the citizens of a country do not have the right to own any land in that country. However, according to the Islamic jurisprudence, there is no problem in sharecropping and participation in this affair without owning the land.

Preemption is a contract by which the partner has the right to buy the sold share of the other partner with the same price. (Shahid Thani, 1990)

In Islamic laws, religious minorities like the Muslims have the right of preemption. In this contract like many other contracts, being a Muslim is not a requirement of the contract. If the customer is a non-Muslim citizen the partner regardless of being a Muslim or non-Muslim has the right preemption.

Whenever the customer and partner are both non-Muslim citizens they are not required to have the same creed. In other words, despite the difference of creed the right of preemption is protected for the non-Muslim citizens. They can even preempt from the enemy who has no contract with the Islamic government (Allameh Helli, n).

Representation is a religious contract according to which someone (represented) chooses another one (representative) as his own deputy (Al-Shahid et al., 1990).

Religious minorities like other citizens of Islamic society are allowed to choose a deputy to represent them whether from among the Muslims or non-Muslims. They can choose a deputy like the Muslims to handle their affairs in sale, acceptance or termination of the sale by their right of option, right of preemption, warrant, guarantee, bail, mortgage, partnership, reconciliation, PLS, borrowing, sharecropping, lease, bond, wage, lending, last will, prosecution and so on and so forth (Allameh Helli, n).

It needs to be reminded that wherever the religious minorities do not have the right to take possession of anything they do not have the right to take a deputy; for example, they cannot marry a Muslim girl and for this reason they cannot take someone as their own deputy (ibid).

The reason of this decree is the verse 141 of Surah al-Nisa (The holy Quran, Surah al-Nisa, 141)<sup>1</sup>.

## **6. Usury**

Usury is absolutely forbidden in Islam regardless of whether this usury is paid through a trade based on a contract or in return of a loan.<sup>2</sup> The Quranic verses and prophetic traditions are condemning usury. As to the philosophy of impermissibility of usury there are various ideas among which one can refer to the oppressive nature of this action and financial bankruptcy of traders.

Here the issue of the demonstration of the impermissibility or permissibility of usury between the Muslim and infidel is at stake. As it is needless to say, jurists have allowed usury in some cases as exceptions including: usury between the father and son, usury in goods which are traded individually, usury between the couples, usury between the Muslim and non-friend infidel only if the added value is received by the Muslim and usury in sharing the shared good.<sup>3</sup>

In these sentences the Muslim is allowed to get usury from the infidel.

## **7. Freedom of Endowment**

### **A) Endowment of Religious Minorities for Religious Minorities and Muslims**

Shia jurists and most of Sunni jurists do not suggest one's being a Muslim as the requirement of making a public endowment and they believe that the religious minorities can endow properties for public purposes.

They can endow school, street, house, carvansaray and so on and so forth in the interest of Sunnis or in the interest of the believers in Islam and other religious creeds (Al-Shahid Al-Thani, 1990; Allameh Helli, n; Al Sharbini, 1994).

The minorities are not allowed to initiate an endowment for impermissible purposes. If there is a conflict regarding the endowment the Islamic judge should annul it. Endowment for temples, synagogues and churches and their repairing as well as endowment for the servants of these places and Torah and Bible is sin and is not permissible according to Islam (Shahid al Thani, 1990).

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<sup>1</sup> The infidels cannot dominate the Muslims by any means.

<sup>2</sup> Shahid Aval, Al-Lumah al-Damishqya, 1, 245.

<sup>3</sup> Shahid Aval, Al-Lumah al-Damishqyah, 1, 246.

Endowment of carvansarys which are located on the roads leading to religious places and which are used by the non-Muslim citizens for reaching the synagogues and churches is permissible. Even some Muslim jurists consider the endowment of these carvansarys by Muslims correct because this is an endowment for the People of Book which is permissible (Shahid al Thani, 1990). Some of the Shia jurists have declared the endowment of the aforementioned cases (for temples, churches, and servants of these places and religious scriptures) free for the religious minorities because these endowments are correct based on their beliefs. (Najafi, 1988)

The argument used by the Islamic jurists to justify the veracity of the endowment of the religious minorities is that doing something good for others is a human right and the People of Book can enjoy it like the Muslims. Every endowment that is correct to be done by Muslims is also correct to be done by the minorities and the reason for impermissibility of endowment for the temples or churches is that this is an act of helping the infidelity and sin (al Shahid al Thani, 1990). This is also endorsed by the Quranic verses (The Holy Quran)<sup>4</sup> and on the other hand since the only accepted divine religion is Islam (The Holy Quran)<sup>5</sup> helping other religions to expand is not correct.

### **B) Endowment by Muslims for Religious Minorities**

In the same way that the endowment of minorities for Muslims is permissible, the endowment of Muslims is permissible too except for the temples, churches and their religious scriptures. (Allameh Helli, n)

Some other jurists say that Muslims can only make endowment for the non-Muslim citizens who are their parents. (Ibid, 429) It seems that endowment for all religious minorities is permissible because there is no religious barrier for their endowment. On the one hand, the principle of "kingdom" has allowed the Muslims to take possession of their properties in rational way and he is allowed to use his property the way he likes; even if in the form of making endowment for the religious minorities and on the other hand, there is no condition of being a Muslim for endowment. Then, there is no religious barrier for making an endowment for the non-Muslim. As a result, making endowment for all religious minorities including their relatives or non-relatives is correct.

### **Topic Three: Inviolability of the Honor of the Non-Muslim**

#### **First Part: Necessity of Endowing Judicial Rights to Minorities**

One of the rights which is a requirement of a peaceful life for a minority in an Islamic country or any other country is the right of judicial independence for resolving the personal conflicts based on the religious laws of that minority.

In other words, these rights have to be guaranteed by practical sanctions otherwise they have no avail for the minorities.

The judges of Islamic state can also judge between them based on Islamic decrees or he can use the decrees in Torah or Bible for judgment.

Holy Quran states in this regard:

"They are listeners to lies and devourers of the unlawful. If they come to you, judge between them or turn away from them. If you avoid them they cannot harm you in anything; but if you judge, judge between them with fairness. Allah loves the just. But how will they come to you for judgment when they already have the Torah in which is the judgement of Allah? Then they turn away after that; those are not believers. We have sent down the Torah in which there is guidance and light by which the submissive prophets judged the Jews, as did the rabbis and those of their Lord, guarding what they were required to of the Book of Allah, and for which they were witness. Do not fear people, but fear Me. And, do not take a small price for My verses. Those who do not judge with what Allah has sent down are the unbelievers."

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<sup>4</sup> Verse 2, Surah al-Maedah: Cooperate with each other for goodness and God-wariness not for sin or enmity.

<sup>5</sup> Verse 19, Surah Ale Emran: The religion by God is Islam.

The jurists have argued that the latter verse suggests that you can refuse from judging between them and you can refer them to their own courts in order to resolve their conflict (Muhaqiq Karaki, 1988).

Some of the jurists have declared the acceptance of the cases of the non-Muslim minorities who are loyal to Islamic state necessary and suggested that the Muslim judge is obliged to decide on these cases and in order to endorse their own views they have resorted to the verse 49 of Surah al-Maeda:

And judge among them in accordance to that which Allah has sent down and do not be led by their desires. Take heed lest they should turn you away from a part of that which Allah has sent to you. If they reject your judgment, know that Allah wants to scourge them for some of their sins. Many of the people are wrongdoers.

This group of jurists state that this verse considers the judgment among the non-Muslim citizens an obligation of Islamic government and in fact this verse abrogates the previous verse that allows the Prophet to refer them to their own courts. They have also offered another reason in this regard that reads as follows:

"Undoubtedly, overcoming the oppression is an obligation for the Muslim leadership and this is also the case with the judgment between those who have a conflict in order to fight the oppression. Accordingly, the Islamic judicial system is obliged to investigate about the cases brought by the non-Muslim citizens to the court"(Allameh Helli, n).

But this argument is wrong because Islamic courts cannot summon the non-Muslim parties of a conflict to the court by force unless they come by themselves. Then the latter verse of Quran suggests the same thing proposed by the verse "when you are judging between them be fair because God loves the fair ones".

To put it otherwise, these two verses suggest that whenever you are judging between the non-Muslim groups you must judge based on divine revelation and justice and thus, the verse 49 of Surah al-Maeda does not have any view of the initial judgement and they both suggest the same (Amid Zanjani, Abbas Ali, n)

#### **A) Two Non-Muslims Reference to Islamic Courts**

Allameh Helli in *Qawaed al-Ahkam* writes:

"Whenever the non-Muslim citizens come to the Islamic courts the judge can either judge among them or refer them to their own courts. Of course, the litigation parties should have the same religion (for example both should be either Christians or Jewish). Moreover, if the parties are from two different religions this is controversial because here the one party's reference would abrogate the reference provided by the other party (for example, Christianity abrogates Judaism). As Allameh's words show, there is no compulsion for judging between the parties.

#### **B) Reference of two individuals to Islamic court that one is non-Muslim and the other is not non-Muslim:**

Here there are some alternatives, for example, one would be Muslim while the other would be refugee or non-Muslim citizen.

##### **1. One of the parties is a non-Muslim citizen and the other a refugee:**

In this case since the Islamic government has concluded an agreement with non-Muslim citizens and receives tax and alms in order to protect them when they are coming to the court the Islamic judge is obliged to judge about their case.

##### **2. If one of the parties is Muslim and the other a non-Muslim citizen**

Generally speaking, if one of the parties to the conflict is Muslim while the other is a refugee or an enemy the only competent court for investigation of this case is Islamic court and the court is obliged to issue the verdict.

#### **C) Reference of two refugees for dispute settlement to Islamic Courts:**

The majority of Islamic jurists have suggested that if two refugees refer for judgment their case has to be addressed like that of the two non-Muslim citizens. Then, the Muslim judge is free to investigate of the case or refer them to other courts. This is also endorsed by Allameh Helli.(Allameh Helli, 1999; Allameh Helli, Tahrir al-Ahkam, n; Ibn Allameh, 1956)

### **Second Part: Freedom of Minorities in Choosing the Court**



Religious minorities are free to choose the court in which they want their cases to be investigated. They can take their cases to Islamic courts or refer to other relevant courts. Accordingly, Islam has protected the right of judicial independency.

As to those cases where one of the parties is Muslim there will be no necessity of reference to non-Islamic courts and the case will be investigated in the Islamic court based on fairness and justice.

**"Whenever one of the parties is non-Muslim citizen or Muslim while the other is a refugee the Islamic judge is required to judge among them based on Islamic decrees".**

Islam insists on this right of judicial independence for the the non-Muslim citizens and religious minorities and gives authority to minority courts to investigate the relevant cases.

Accordingly, in the Article 13 of Constitution of Islamic Republic of Iran we read:

Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities who are free to pursue their religious rituals and personal beliefs and religious doctrines within the framework of law" (Khosrawi.Muhammad Reza, 2001).

### **Third Part: Crimes Committed by the People of Book**

If one of the people of Book commits a crime, there are various alternative possibilities about his being punished or not because the committed crime would be only forbidden in Islamic Sharia and is published or it may be punished just in the religion of the criminal or it may be punished in both religions or it may be published according to the state laws.

Each one of these alternative possibilities can be independently studied:

#### **1. If the committed crime is merely forbidden in Islamic religion:**

If the crime is permissible in the religion of the criminal while he has committed it in public among the Muslims, the competent Islamic court is competent to investigate the case because he has pledged to be loyal to the laws of the Islamic state where he lives as a legal citizen. However, if the crime has not been committed in the public the criminal will not be prosecuted. For example, if drinking wine is not forbidden in the religion of the People of Book he is allowed to drink it in his privacy.

#### **2. If the committed crime is forbidden just in their religion:**

Only their courts are competent to investigate the case and the Islamic court is not involved in this prosecution because Islamic state is just obliged to prosecute the crimes which are mentioned in Islamic Sharia. Of course, his fellow religion-mates can prosecute him after getting the required permissions from the Islamic government but this cannot be handled individually rather there should be an organization in charge of it.

#### **3. If the committed crime is forbidden in both religions:**

Authorized Islamic court is competent to handle this prosecution but it can also allow their own courts to prosecute the criminal. The majority of the Shia jurists endorse this freedom of choosing between handling the prosecution or allowing the relevant court of their own to prosecute the criminal; of course a punishment should have been decided for the crime in advance otherwise the punishment will be decided by Islamic court. For example, in such crimes as fornication and sodomy which are punished in both religions the judge can punish the criminal himself or let the courts of other religion to handle the job.

The reason for this is that on the one hand, the non-Muslim citizens has announced his own commitment to the Islamic Law and on the other hand, the contract also allows the non-Muslim citizen to continue to believe in his own religion and this is why the Muslim judge is free to choose which court to prosecute him.

#### **4. If the committed crime is forbidden based on the state laws:**

Since the criminal is considered to be the citizen of the Islamic country only the Muslim court is competent for investigation of the case and this individual is prosecuted like the Muslim citizens as the non-Muslim citizen has already pledged to observe Islamic Sharia laws. (Shariati.Ruhullah, 2002)

### **Fourth Part: Quality of Investigation of the Crimes of People of Book**

In judicial prosecutions what is of importance is the just and fair investigation and it is a principle that the investigation must be impartial and no discrimination should be done to any of the parties regardless of their religions.

In the history of Islam, we have seen that in some cases the party who has a dispute with the non-Muslim is a high ranked Muslim official but since the non-Muslim was right in his complaint the court has done the justice without taking anything into consideration based on the judicial normal procedure. An example of such courts is the case where Imam Ali and a Christian go to Shurayh the Judge and this event has been mentioned in Shia and Sunni resources. (Al Damishqi, 1995)

### Conclusion:

1. Islam has recognized the comprehensive freedom of the people of Book (religious minorities) and has made its best to protect their economic and judicial rights.
2. Upon studying this issue and the works that have been written in this regard we can conclude that the practical method of Prophet of Islam and Imam Ali and all the Imams had been letting the religious minorities to freely handle their economic and commercial activities. They were free to conclude their economic contracts with Muslims and the Islamic government is obliged to provide the security required for them and prevent all types of encroachment to their properties.
3. Muslim jurists by referring to reasons and authentic prophetic traditions, have suggested that the non-Muslim citizens are allowed to involve in trade, mortgage, partnership, PLS, sharecropping, lease, right of preemption, representations and the like with the Muslims within the framework of Islam laws and pursue their economic affairs in peaceful way.
4. Islam has approached the religious minorities in the spirit of friendship and this has opened the path for free trade and conclusion of contracts with the non-Muslim citizens and refugees who live in Islamic territory.

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